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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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☐ FPD ☐ Appointed ☐ CJA ☒ Pro Per ☐ Retained

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

In RE Apple Iphone 4 Products Liability Litigation

CASE NUMBER:

5:10-md-2188-RMW

PLAINTIFF(S),

v.

NOTICE OF APPEAL

DEFENDANT(S).

NOTICE IS HEREBY GIVEN that Michael J. Schulz hereby appeals to
Name of Appellant
 the United States Court of Appeals for the Ninth Circuit from:

Criminal Matter

- ☐ Conviction only [F.R.Cr.P. 32(j)(1)(A)]
☐ Conviction and Sentence
☐ Sentence Only (18 U.S.C. 3742)
☐ Pursuant to F.R.Cr.P. 32(j)(2)
☐ Interlocutory Appeals
☐ Sentence imposed:

☐ Bail status:**Civil Matter**

- ☒ Order (specify):
 Order Granting Mot. for Final Settlement A
☐ Judgment (specify):
☐ Other (specify):

Imposed or Filed on 8/10/2012. Entered on the docket in this action on 8/10/2012.

A copy of said judgment or order is attached hereto.

September 7, 2012

Date

Signature

☒ Appellant/ProSe ☐ Counsel for Appellant ☐ Deputy Clerk

Note: The Notice of Appeal shall contain the names of all parties to the judgment or order and the names and addresses of the attorneys for each party. Also, if not electronically filed in a criminal case, the Clerk shall be furnished a sufficient number of copies of the Notice of Appeal to permit prompt compliance with the service requirements of FRAP 3(d).

SERVICE LIST

In re Apple iPhone 4 Products Liability Litigation, Case No. 5:10-md-02188-RMW

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CASE NO. 5:10-md-2188 RMW

IN RE APPLE IPHONE 4 PRODUCTS
LIABILITY LITIGATION

**ORDER GRANTING MOTION FOR
FINAL SETTLEMENT APPROVAL;
GRANTING IN PART AND DENYING IN
PART PLAINTFFS' REQUEST FOR
ATTORNEYS' FEES AND COSTS**

Plaintiffs and defendant Apple, Inc. ("Apple") move jointly for final approval of a class action settlement. Plaintiffs separately request approval of an award of \$5.9 million in attorneys' fees, expenses and incentive fees for class representatives. For the reasons below, the court grants the motion for approval of the settlement. The court approves an attorneys' fees award of \$2,163,292.50, the amount of plaintiffs' counsel's documented lodestar with no multiplier, along with \$126,926.43 in expenses and a \$500 incentive fee per class representative.

I. BACKGROUND

Plaintiffs brought this consolidated nationwide class action on behalf of "all persons who purchased an iPhone 4 in the United States between June 24, 2010 and the date of final approval." Broadly speaking, the suit sought relief under state consumer protection laws for injuries allegedly resulting from an antenna defect that impacts the iPhone 4's cellular network reception.

1 On January 24, 2012, after Apple had produced substantial discovery but before the filing
2 of any dispositive motions, the parties reached a settlement agreement (the "Agreement"). Two
3 mediators, the Honorable Daniel Weinstein and Catherine Yanni, Esq of JAMS, supervised four
4 mediation sessions leading to the settlement. The court preliminarily approved the agreement on
5 February 17, 2012.

6 **A. Notice**

7 Following preliminary approval, the claims administrator sent e-mail notice to 15.7 million
8 class members, the number of eligible iPhone 4 purchasers for whom Apple retained email
9 addresses. *See* Dkt. No. 53 at 6. Notice was also published in the April 2, 2012 edition of *USA*
10 *Today* and the May 2012 issue of *Macworld*. *Id.* As Apple sold 27.1 million iPhone 4s in the U.S.
11 during the settlement period, the parties estimate the size of the class to be between 15.7 million
12 and 27.1 million, depending on the number of potential class members who purchased more than
13 one iPhone 4.

14 **B. Settlement Terms**

15 The agreement provides that: (1) any class member who files a claim form before August
16 28, 2012 is eligible to receive a cash payment of \$15; (2) Apple will extend its "free bumper
17 program"¹ for 18 months following discontinuation of the sale of the iPhone 4; and (3) Apple will
18 not oppose a request for attorneys' fees up to \$5.9 million.

19 **C. Claims, Opt-Outs and Objections**

20 As of June 29, 2012, approximately 44,000 class members had filed claims for monetary
21 recovery, 94 potential class members had opted out of the settlement, and 21 class members had
22 filed objections. The number of claims represents somewhere between 0.16% and 0.28% of the
23 total class, for a total cash recovery of approximately \$660,000. None of the objectors appeared at
24 the final approval hearing.

25
26 ¹ Bumpers are rubber cases for the iPhone that fix the alleged reception problem. Plaintiffs
27 allege that Apple initiated the "free bumper program," pursuant to which the company offered all
28 iPhone 4 purchasers a complimentary bumper, around July 16, 2010. *See* Dkt. No. 14
(Consolidated Class Action Complaint) ¶ 139. It is not clear when Apple would have ended the
free bumper program absent this settlement.

II. ANALYSIS

A. Approval of the Settlement Agreement

On a motion for approval of a class action settlement, the court must assure itself that “the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 625 (9th Cir. 1982). “The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” *Id.* Instead, in analyzing the fairness of the settlement, courts in the Ninth Circuit consider: (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining a class action; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (7) the presence of a governmental participant; and (8) the reaction of the class members of the proposed settlement. *See Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004).

1. Churchill Factors

Here, the *Churchill* factors weigh largely in favor of approval. Plaintiffs had potentially valid claims, but were likely to face significant hurdles on class certification (since some putative class members did not experience reception problems) and the merits (since it is not clear that the iPhone 4 is “defective” or that Apple made actionable misrepresentations). Further litigation would have certainly involved substantial time and discovery. Apple provided a large amount of discoverable material before the settlement, giving plaintiffs ample information to use in evaluating the strength of their case. The parties were represented by sophisticated counsel and negotiated with very experienced mediators. The mediators submitted a declaration reflecting their belief that the settlement is a “fair, reasonable and adequate compromise, considering all of the relevant issues.” Dkt. No. 58-1, Ex. A ¶ 3. In addition, the small number of opt-outs and objections (115 in total) relative to the size of the class (at least 15.7 million) supports approval. *See, e.g., Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 118 (2d Cir. 2005) (18 objections

1 out of five million notices shows that “the class appears to be overwhelmingly in favor” of the
2 settlement).

3 On the other hand, the small number of claims suggests that the relief obtained by
4 plaintiffs is not of great significance to most class members, particularly in light of the large
5 number of individuals who ostensibly received direct e-mail notice. Relatedly, the court finds that
6 plaintiffs’ valuation of the settlement, which includes the retail value of approximately 2.6 million
7 free bumpers distributed by Apple between July 2010 and the date of the final approval hearing—
8 a total of more than \$75 million—is overstated. Although plaintiffs claim the lawsuit was the
9 “catalyst” for the free bumper program, they offer no evidence supporting this assertion or
10 showing that Apple would not have initiated the program in the absence of litigation.² In addition,
11 while the extension of the free bumper program clearly offers some value to the class, it is
12 uncertain how many class members will take advantage of this provision. In fact, at oral
13 argument, the parties conceded that there was a low claims rate, which they attributed to the fact
14 that the overwhelming majority of iPhone 4 users already have cases that solve the alleged
15 reception problem. The court therefore notes that while the true value of the settlement is difficult
16 to ascertain, it appears much closer to the actual monetary recovery of \$660,000 than plaintiffs’
17 estimate of “over \$75 million.” Dkt. No. 521-1 at 13. Nevertheless, the court does not find the
18 settlement to be unfair or inadequate, particularly since class members were offered a choice of
19 either cash or a case that *undisputedly* fixes the alleged defect.

20 2. Objections

21 The court also finds that except for the objection to the size of the attorneys’ fees request,
22 which is addressed below, the objections are not well-taken. First, several objectors contend that
23 \$15 is insufficient to compensate them for their injuries. These objectors provide no further
24 explanation of the injury they suffered, and only two suggest alternative forms of relief: new
25 Apple products. The Ninth Circuit has cautioned that “settlement is the offspring of compromise;

26 ² The complaint indicates that Apple initiated the “free bumper program” after receiving a
27 torrent of negative publicity related to the iPhone 4’s reception issues and an “open letter” from
28 New York Senator Charles Schumer asking Apple to “remedy [the reception problem] free of
charge.” See Dkt. No. 14 at ¶¶ 112-39.

1 the question we address is not whether the final product could be prettier, smarter or snazzier, but
2 whether it is fair, adequate and free from collusion.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
3 1027 (9th Cir. 1998). Furthermore, if any objector believed that “his or her personal claim was
4 being sacrificed for the greater good ... they had the right to opt-out of the class.” *Id.* Put another
5 way, without more, objections seeking a “better” result are not sufficient to overturn a settlement
6 agreement.

7 Other objectors complain that the claims process was overly burdensome. The court
8 disagrees. Class members were required to provide only their name, address and iPhone serial
9 number and to check a box verifying their reception problems in order to file a claim, and could do
10 so by mail or electronically. A class member’s name and address are necessary in order to provide
11 him or her with a \$15 check, and the serial number requirement is a reasonable measure to avoid
12 fraud.

13 Another group of objectors—represented by attorneys who regularly represent objectors to
14 class action settlements—argue without citation to authority that the court should require “all
15 relevant court documents” to be posted on the settlement website. Given that key documents,
16 including the court’s preliminary approval order and the settlement agreement itself, are available
17 on the website and that direct e-mail notice was sent to nearly 16 million people, the court finds
18 this objection to be without merit.

19 These same objectors also contend that the class is “unascertainable” because the court will
20 be “required to conduct an individual inquiry to determine whether [each member] had antenna
21 trouble.” Dkt. No. 55 at 4. However, as Apple has agreed to provide relief to any putative class
22 member who files a claim form, no such inquiry is required. *Compare Forman v. Data Transfer*,
23 164 F.R.D. 400, 403 (E.D. Pa. 1995) (“Defining the purported class as ‘all residents and
24 businesses who have *received unsolicited facsimile advertisements*’ requires addressing the central
25 issue of liability to be decided in the case. Determining a membership in the class would
26 essentially require a mini-hearing on the merits of each case.”) (emphasis in original). This
27 objection is therefore rejected.

28

1 complimented and credited for resolving the case without court involvement and protracted
2 litigation. The court also awards \$126,926.43 in expenses, and a \$500 incentive payment for each
3 class representative.

4 It is so ordered.

5 DATED: August 10, 2012
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8 Ronald M. Whyte
9 United States District Judge
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28 court therefore denies this request without prejudice to a properly supported request filed at a later date.

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